

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

ORDER

Kalu Khan & Anr.

Vs. State of Rajasthan

S.B.CR.MISC. PETITION NO.1025/2006

against the order dt.5.8.2006 passed by
Additional Sessions Judge, Gulabpura,
Distt. Bhilwara in Cr.Revision
No.51/2003

DATE OF ORDER

::

September 01,2006

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr.D.K.Gaur, for the petitioner.

Mr.Ashok Upadhyaya, Public Prosecutor.

BY THE COURT:

By the instant criminal misc. petition under section 482 Cr.P.C., the petitioners have challenged the order dt. 5.8.2006 passed by the Additional Sessions Judge, Gulabpura, Distt. Bhilwara (for short 'the revisional court' hereinafter), whereby the revision petition filed by the petitioners against the order dt. 16.8.2003 passed by the Additional Chief Judicial Magistrate,

Gulabpura, Distt. Bhilwara (for short 'the trial court' hereinafter), was dismissed.

I have heard learned counsel for the petitioners and the Public Prosecutor for the State. Carefully gone through the order impugned.

The petitioners have filed an application before the trial for taking the documents on record and considering them at the time of framing of charge. That application came to be dismissed by the trial court and the revision petition against that order was also dismissed.

In *State of Orissa Vs. Debendra Nath Padhi*, **JT 2004 (10) SC 303**, a Three Judge Bench of the Hon'ble Supreme Court held that at the time of framing the charge or taking cognizance, the accused has no right to produce any material. The Apex Court further observed that the only right the accused has at that stage is of being heard and nothing beyond it. The Apex Court further held as under:

"At the stage of framing the charge roving and fishing inquiry is impermissible. It is well-settled that at the stage of framing of charge, the defence of the accused cannot be put forth. It only means hearing the

submissions of the accused on the record of the case as filed by the prosecution and nothing more. The expression 'hearing the submissions of the accused' cannot mean opportunity to file material to be granted to the accused and thereby changing the settled law. At the stage of framing of charge, hearing the submissions of the accused has to be confined to the material produced by the police."

In view of the aforesaid decision of the Hon'ble Supreme Court, I do not find any error in the order impugned warranting interference in inherent jurisdiction.

The petition is, therefore, dismissed.

[H.R.PANWAR],J.

m.asif/-